

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JOHN WESLEY SLAGLE,

Petitioner,

-vs-

MICHELE MILLER, Warden,  
Belmont Correctional Institution,

Respondent.

:

Case No. 3:12-cv-367

:

District Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

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**DECISION AND ORDER WITHDRAWING REPORT AND  
RECOMMENDATIONS AND GRANTING MOTION TO AMEND**

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This habeas corpus case is presently pending on a Report and Recommendations, made under Rule 4 of the Rules Governing § 2254 cases, to dismiss the Petition on initial review (Doc. No. 3). Petitioner has filed Objections (Doc. No. 5) and a simultaneous Motion to Amend (Doc. No. 6).

28 U.S.C. § 2242 provides that a habeas corpus petition may be amended as provided in the Federal Rules of Civil Procedure. Fed. R. Civ. P. 15, in turn, allows a civil complaint to be amended once as a matter of course within twenty-one days after services of a responsive pleading. Because a habeas corpus petition is one to which a responsive pleading is required, Petitioner is entitled to amend. The Motion to Amend is GRANTED. Because the pending Report and Recommendations addresses the unamended Petition, it is moot and is hereby WITHDRAWN. The Magistrate Judge deems the Petition as amended now ripe for Rule 4 review.

December 17, 2012.

s/ *Michael R. Merz*  
United States Magistrate Judge